

“marketing affiliates,” there is a genuine New York City end-user for this supply: the ConEd System located at 134th Street in Manhattan. Most importantly, the Northeast ConneXion comes nowhere close to the Indian Point evacuation network, the ConEd power lines, the New Croton Reservoir or the Bryn Mawr Siphon, and would cross the Hudson River, far below the critical-fisheries habitat of Haverstraw Bay. (See Northeast ConneXion description, attached hereto as Exhibit “I.”) These factors make the Northeast ConneXion Project more consistent with the CZMA and New York’s CMP than Millennium, while providing more certain benefits.

Accordingly, because reasonable alternatives to the Pipeline exist, Millennium fails to satisfy the third element of its Ground I argument, and its appeal should be dismissed.

POINT III

THE SECRETARY SHOULD NOT OVERRIDE THE DOS OBJECTION ON “GROUND II” BECAUSE MILLENNIUM HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT THE PIPELINE IS NECESSARY IN THE INTEREST OF NATIONAL SECURITY

The second substantive ground underlying Millennium’s appeal to have the Secretary override the DOS Objection, involves whether the Pipeline is “necessary in the interest of national security” (“Ground II”). 16 U.S.C. § 1456(c)(3)(A). To prevail on this argument, Millennium must demonstrate that a national defense or other national-security interest would be “significantly impaired” if the Pipeline was not permitted to go forward as proposed. 15 C.F.R. § 930.122. The Secretary’s decision “shall be aided by information submitted by the Department of Defense or other interested federal agencies [the views of which] shall be given considerable weight.” Id.

The Record, however, is wholly devoid, however, of any federal-agency opinion as to the Pipeline’s “necessity” for the national security. Instead, devoting but two pages of its brief to this issue, Millennium argues without support that the Pipeline is “necessary in the interest of

national security” because it will decrease “the Nation’s reliance upon energy supplies from insecure sources,” and “encourage the development of secure North American energy resources,” and enhance the nation’s energy infrastructure in case of terrorist attack. (See Millennium Br. at 107-09.)

Millennium’s general averments fall far short of its burden. As the Secretary has observed in other consistency appeals, such blanket, boilerplate assertions fail to satisfy Ground II even if made by a federal agency, not just an applicant. See Amoco Appeal at 56-58 (rejecting Ground II override because, without more specific information, general averments by Departments of Defense and State that project will contribute “to limiting U.S. dependence on imported energy” and promoting domestic energy sources, “do not meet the criteria established in [15 C.F.R. § 930.122]”). Moreover, Millennium’s terrorism argument is misplaced; as discussed above, given the September 2001 terrorist attacks on this country, locating a natural gas pipeline where it can cause so much damage to critical infrastructure within the coastal zone, cannot fairly be deemed to be “necessary in the interest of national security.” 15 C.F.R. § 930.122.